LIBRARY
SUPREME COURT, U. S.

FILED
FEB 13 1958
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 621

WELDON BRUCE DAYTON, *Petitioner*,

v.

JOHN FOSTER DULLES, Individually and as Secretary of State of the United States, *Respondent*.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF OF FEDERATION OF AMERICAN SCIENTISTS AND AMERICAN JEWISH CONGRESS AS *AMICI CURIAE*

NATHAN H. DAVID,
Attorney for Federation of American Scientists

SANFORD H. BOLZ,
Attorney for American Jewish Congress
425-13th Street, N. W.
Washington 4, D. C.

INDEX

	Page
QUESTIONS PRESENTED	1
STATEMENT	2
THE INTEREST OF *Amici Curiae*	5
SUMMARY OF ARGUMENT	8
ARGUMENT	10
I. IN DENYING PETITIONER A PASSPORT RESPONDENT DEPRIVED HIM OF AN ADMITTED BASIC RIGHT WITHOUT GRANTING HIM FUNDAMENTALS OF PROCEDURAL DUE PROCESS OF LAW TO WHICH HE IS ENTITLED	10
A. The importance of the interest that has been adversely affected	11
B. The manner in which petitioner was deprived of his right to travel	15
C. Respondent's reasons for depriving petitioner of his right to travel without granting him a hearing	16
D. The precedents in this Court do not sustain respondent's action	25
II. THE ADMINISTRATIVE PROCEDURE ACT APPLIES TO PASSPORT PROCEEDINGS	32
CONCLUSION	34

CITATIONS

CASES:

Bailey v. *Richardson*, 182 F. 2d 46 (D.C. Cir. 1950)	25
Bauer v. *Acheson*, 106 F. Supp. 445	12
Briehl v. *Dulles*, 248 F. 2d 561 (D.C. Cir.)	35, 36, 37
Communist Party v. *Subversive Activities Control Board* (U.S. Ct. App. D.C. Cir.) decided Jan. 9, 1958	26
Edwards v. *California*, 314 U.S. 160	13
Falbo v. *United States*, 320 U.S. 549	31

Page

Gonzales v. *United States*, 348 U.S. 407 31
Interstate Commerce Commission v. *Louisville-Nashville R. Co.*, 227 U.S. 88 (1913) 16
Jay v. *Boyd*, 351 U.S. 345 ..... 16, 28, 29, 30
Jencks v. *United States*, 353 U.S. 657 26
Parker v. *Lester*, 98 F. Supp. 300 18
Parker v. *Lester*, 112 F. Supp. 433 ..... 18, 19, 20
Parker v. *Lester*, 227 F. 2d 708 (9th Cir.) 17, 20, 26
Parker v. *Lester*, 235 F. 2d 787 (9th Cir.) 21
Peters v. *Hobby*, 349 U.S. 331 36
Reid v. *Covert*, 354 U.S. 1 25
Roviaro v. *United States*, 353 U.S. 53 26
Shaughnessy v. *U.S., ex rel. Mezei*, 335 U.S. 206 28
Schware v. *Board of Bar Examiners*, 353 U.S. 232 .. 27
Shachtman v. *Dulles*, 225 F. 2d 938 (D.C. Cir.) 33
Simmons v. *United States*, 348 U.S. 397 30
Sweezy v. *New Hampshire*, 354 U.S. 234 27
United States v. *Curtiss-Wright Export Corp.*, 299 U.S. 304 33
United States ex rel. Knauff v. *Shaughnessy*, 338 U.S. 537 ..... 28, 29
United States v. *Nugent*, 346 U.S. 1 30
Walker v. *Chief Quarantine Officer*, 69 F. Supp. 980 (D.C. Canal Zone) 13
Watkins v. *U.S.*, 354 U.S. 178 27
Williams v. *Fears*, 179 U.S. 270 ..... 11, 12
Wong Yang Sung v. *McGrath*, 339 U.S. 33 32

REGULATIONS:

22 C.F.R. 51.137 21
22 C.F.R. 51.170 22
22 C.F.R. 51.163 21
22 C.F.R. 53.3(e) 17

STATUTES:

Administrative Procedure Act (60 Stat. 237, as amended, 5 U.S.C.A. 1001 et seq.) 32

MISCELLANEOUS:

1 *Blackstone's Commentaries* 134 12
Universal Declaration of Human Rights, Article 13, Paragraph 2 12
Washington Post, January 28, 1958 15

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 621

WELDON BRUCE DAYTON, *Petitioner,*

v.

JOHN FOSTER DULLES, Individually and as Secretary of State of the United States, *Respondent.*

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF OF FEDERATION OF AMERICAN SCIENTISTS AND AMERICAN JEWISH CONGRESS AS *AMICI CURIAE*

QUESTIONS PRESENTED

The record before the Court presents a number of possible questions for decision. The *amici curiae* consider that one question is of crucial importance to our democratic society, and it is on that question that they especially wish to make their views known to the Court. That question is:

Whether the Secretary of State can have the power, consistent with the requirements of procedural due process of law, to deny a passport to a citizen of the United States on the basis, in whole or in part, of confidential information unrevealed to the citizen or the courts.

STATEMENT

The case involves a judgment of the United States Court of Appeals for the District of Columbia dated October 24, 1957, affirming a judgment of the district court denying a motion of the petitioner for a summary judgment and granting the respondent's motion for summary judgment and dismissing the complaint. The complaint sought, among other things, judgment declaring the petitioner is entitled to a passport, and an injunction restraining respondent from continuing to deny petitioner's passport and directing respondent to issue a passport to petitioner forthwith.

In his brief in the lower court, petitioner set forth a detailed statement of his version of the facts and to this respondent replied with an even more detailed counter-statement. From the point of view of the interest of the *amici curiae*, most of the facts so set forth by the parties are not of controlling importance. To us the facts which are significant are as follows:

Petitioner Dayton is a research physicist. On March 5, 1954 he applied for a passport, stating the purpose of his trip to be the acceptance of a three-year appointment as a research physicist at the Tata Institute of Fundamental Research in Bombay, India. After a tentative refusal, an informal hearing and the submission of further sworn documents by the petitioner,

the Passport Office of the Department of State refused to issue a passport to him and he appealed to the Board of Passport Appeals. Proceedings were held on two occasions before the Board; petitioner testified at length under oath on one such occasion. The Board made a recommendation to respondent, the nature of which was not revealed to petitioner. On September 7, 1955, respondent informed petitioner that after receiving the recommendation of the Board of Passport Appeals, and after "a review of the entire record", he had disapproved petitioner's request for passport facilities "under § 51.135 of the Passport Regulations".

Petitioner filed suit and as one of the consequences thereof, on October 5, 1956, the Secretary of State for the first time rendered a formal Decision and Findings in petitioner's case. In such findings respondent disclosed that his decision was based in substantial part on (1) confidential information contained in the files of the Department of State, the substance but not the "sources and details" of which it is alleged were disclosed to petitioner, and (2) "other confidential information contained in the files of the Department of State", as to which neither sources, details nor substance was disclosed.[1] As to (1) he stated that such

[1] As the petitioner herein has indicated in a very important footnote, it is stated in the majority opinion below that "The Secretary disclosed . . . the substance of this confidential information", implying that the substance of *all* the information relied upon by the Secretary was revealed to petitioner. This statement in the opinion is clearly erroneous. See Petition herein, p. 12, footnote 4. The court's confusion may stem from statements in a brief of the appellee below in which it is alleged that the petitioner was informed of the substance of the confidential information used against him; this is coupled with an argument that in so doing the Secretary's action was consistent with a recommendation of the Com-

confidential information "relates to the internal security of the United States" and that in his judgment "to disclose publicly the sources and details of this information would * * * be detrimental to our national interest by compromising investigative sources and methods and seriously interfering with the ability of * * * [the State] Department and the Executive Branch to obtain reliable information affecting our internal security" and, moreover, "would have an adverse effect upon * * * [their] established relationships in the security and intelligence area." He stated as to (2) that any disclosure "might prejudice the conduct of United States foreign relations" and that disclosure of sources and details "might * * * prejudice the interest of United States foreign relations." The Secretary concluded that he had "reason to believe, on the balance of all the evidence, that the applicant is going abroad to engage in activities which will advance the Communist movement, for the purpose, knowingly and wilfully of advancing that movement". This conclusion was stated to be based upon the findings and the related confidential information (the substance but not the sources and details of which was disclosed) "as well as [the] other confidential information" (neither the substance, sources nor details of which were revealed). Petitioner's application was accordingly denied under § 51.135(c) of the Regulations, "and because the issuance of a passport would be contrary to the national interest."

On October 10, 1956, petitioner filed a motion for summary judgment in the district court and respond-

---

mission on Government Security that in passport cases the principle of confrontation might safely be relaxed so long as the substance of confidential information was disclosed. See Brief of Appellee below in response to Brief of *Amicus Curiae*, p. 10.

ent countered with a cross-motion. The Secretary's motion was granted and the complaint was dismissed, the district court ruling that "under the circumstances of this case, the manner and use of confidential information accord with both procedural and substantive due process." A division of the Court of Appeals affirmed the district court's judgment, one judge dissenting.

THE INTEREST OF THE *AMICI CURIAE*

The Federation of American Scientists (FAS) is a non-profit organization of scientists who have associated themselves together for the collective expression of their views on public issues where the opinions of scientists are relevant, issues which affect science or with reference to which the experience or perspective of scientists may be a useful guide. Membership in the original organization comprised approximately 90% of the technical personnel at the various Manhattan District research centers. The present membership numbers over 2200, almost all of whom are scientists, engineers, mathematicians and medical research personnel. The organization also includes a small proportion of non-scientists interested in the aims and purposes of the group.

When FAS was formed at the end of World War II, it stated its basic aim as the meeting of "the increasingly apparent responsibility of scientists in promoting the welfare of mankind and the achievement of a stable world peace." The preamble of its Constitution contains the following:

"We Therefore Hold These Aims:

1. In the particular field of atomic energy, to urge that the United States help initiate and per-

petuate an effective and workable system of world control based on full cooperation among all nations.

2. In consideration of the broad responsibility of scientists today, to study the implications of any scientific developments which may involve hazards to enduring peace and the safety of mankind.

3. To counter misinformation with scientific fact, and especially, to disseminate those facts necessary for intelligent conclusions concerning the social implications of new knowledge in science.

4. To safeguard the spirit of free inquiry and free interchange of information without which science cannot flourish.

5. To promote those public policies which will secure the benefits of science to the general welfare.

6. To strengthen the international cooperation traditional among scientists and to extend its spirit to a wider field."

It is the objectives set forth in the paragraphs numbered 4 and 6 which prompted FAS to intervene in this litigation.

From its inception, the group has given serious study to the effects of travel restrictions on the interchange of scientific and cultural ideas and on the reputation of the United States abroad. It has been most seriously concerned with any policy or law which might have the effect of isolating American science and thought by restrictions on movement across the borders of the United States.

Because of these interests, the Federation has followed the course of the present case. It appears to

FAS that the implications of the questions presented by this appeal transcend any impact the decision may have on the petitioner. The determination of these questions will directly affect what may well be a substantial group of passport applicants, among whom are many persons falling in the same general category as the membership of the Federation. It is their view that restrictions on the international travel of such persons have effects on the advancement of science and knowledge which cannot be overstressed.

The American Jewish Congress, a national organization established in 1918, is committed to the dual, and for it inseparable, purposes of promoting the creative survival of the Jewish people and of securing and extending American democracy. The special concern of the Jewish people in human rights derives from an immemorial tradition that proclaims, under the highest sanctions of faith and human aspiration, the common and inalienable rights of all men. The American Jewish Congress has therefore always been unequivocally opposed to communism, fascism and all other forms of totalitarianism. Together with all Americans who prize the blessings of freedom they have repeatedly affirmed their readiness to make those personal and collective sacrifices reasonably calculated to safeguard our democracy. But they have likewise insisted that our nation's security is not enhanced when we resort to measures that violate the essential liberties whose preservation is our basic purpose.

The Congress submits this brief as one of the *amici* because it is convinced that the fundamental procedural protections of our heritage, which it has been well said are the very essence and substance of liberty, are subverted if the Secretary of State is permitted to re-

strict the liberty of American citizens by denying them passports to travel abroad upon information furnished by accusers unknown and unconfronted.

In filing this brief, both *amici* act with the consent of petitioner and the Solicitor General of the United States.

SUMMARY OF ARGUMENT

The right of a United States Citizen to leave the country is a basic right. It is an incident of national citizenship and an attribute of personal liberty. Today, and in the foreseeable future, control over exit from the United States is accomplished by the machinery for issuing passports. As a basic right, the right to travel abroad can be regulated only by due process of law. This is conceded by the court below. We differ with the court, however, on what constitutes procedural due process in restricting liberty to travel—the principal question here of interest to us. We believe that the Secretary of State does not have the power, consistent with procedural due process, to deny a passport to a citizen of the United States on the basis, in whole or in part, of confidential information unrevealed to the citizen and the courts.

The right restricted is an extremely important one. Petitioner, a research scientist, seeks a passport in order to engage in unclassified cosmic ray research at the Tata Institute in India. Respondent has denied him a passport, and if this denial is not set aside petitioner will have lost all opportunity to contribute anything to the studies being conducted at the Institute.

This case is a striking example of how restrictions of individual liberty to travel have an adverse impact

upon the interchange of ideas in professional and scholarly fields. The same restrictions have the same kind of impact on international understanding. These adverse impacts, we submit, may harm our national security, as well as restrict the liberty of the individual. Such restrictions on personal liberty cannot be allowed to stand unless it is clear beyond dispute that they can only help and not hurt the larger national interest used to justify them. There is no such convincing demonstration here.

The record makes it clear that in denying petitioner a passport, respondent acted in part upon information never disclosed in any way—even by substance or summary of the information or indication of the inferences drawn therefrom. By admitting this, respondent concedes that the "hearing" accorded to petitioner did not satisfy the fundamentals of due process and was a sham. Therefore, petitioner's liberty has been restricted without a hearing.

The only understandable reason assigned by respondent for his action is that to disclose all the information upon which he relied in denying petitioner a passport would compromise investigative sources and methods. In a comparable situation, this reason was rejected by the Court of Appeals for the Ninth Circuit in *Parker* v. *Lester*, 227 F. 2d 708, as being inconsistent with due process. In our view, the precise procedural due process point raised here was squarely decided in *Parker*. The court below made no attempt to distinguish this case, and the distinctions suggested by the government are unsound.

Although this Court has in other cases lent some comfort to the government's insistence that it must be

protected against compromise of its investigative sources and methods, no decision of this Court has ever gone so far as the government now urges it to go in sustaining restriction of the liberty of a citizen on information supplied by faceless informers. We believe that none of the cases in which some curtailment of hearing rights has been countenanced is persuasive authority for permitting restriction of a citizen's liberty to travel without a hearing affording the fundamentals of due process.

Once it is concluded that the Constitution requires that passport applicants be given a due process hearing, the provisions of the Administrative Procedure Act would take hold. The foreign affairs function exemption does not apply to passport denial proceedings.

We agree with the conclusion of petitioners in the instant case, and in the companion cases of *Briehl* and *Kent* v. *Dulles,* No. 481, that respondent's passport regulations are not properly authorized by law. The constitutional arguments we have raised should be taken into account in construing his power to grant or deny passports narrowly. Whether on constitutional or on construction of power grounds, it is clear that the judgment below should be set aside.

ARGUMENT

I. IN DENYING PETITIONER A PASSPORT RESPONDENT DEPRIVED HIM OF AN ADMITTED BASIC RIGHT WITHOUT GRANTING HIM FUNDAMENTALS OF PROCEDURAL DUE PROCESS OF LAW TO WHICH HE IS ENTITLED

Respondent will probably concede, as he did below, that passport applicants are entitled to procedural due process. But it is safe to assume that he will qualify this by urging that such due process is a flexible con-

cept which varies with the subject matter and with the necessities of the situation. With this general proposition we can agree. But we strongly disagree that its specific application to this case supports respondent's claim that reasons of internal security, plus some other grounds only vaguely related to procedural considerations, give the blessing of procedural due process to the Secretary's acting upon undisclosed information. We feel that that argument does violence to the concepts set forth in the very cases relied upon by the Government below. It is our firm view that proper application of the expressed views of this Court compels a conclusion diametrically opposed to that urged on behalf of the Secretary of State.

A. The importance of the interest that has been adversely affected

The interest involved here is the freedom to cross the boundaries of the United States, with all that such freedom implies. Many years ago this Court said in *Williams* v. *Fears*, 179 U.S. 270, 274:

> "Undoubtedly, the right of locomotion, the right to remove from one place to another according to inclination, is an attribute of personal liberty."

The validity of this statement is attested to by over 700 years of Anglo-Saxon history. When King John signed Magna Carta at Runnymede on June 15, 1215, the 42nd Article included a provision that:

> "It shall be lawful, for the time to come, for any one to go out of our Kingdom, and return safely and securely, by land or by water, saving his allegiance to us * * *."

Later Blackstone wrote that "personal liberty consists in the power of locomotion, of changing situation,

or moving one's person to whatsoever place one's own inclinations may direct." See *1 Blackstone's Commentaries* 134. The right to move freely about the world was most recently affirmed in the Universal Declaration of Human Rights, Article 13, Paragraph 2, which provides that:

> "Everyone has the right to leave any country, including his own, and to return to his country."

As a signatory to that Declaration, the United States pledged itself to support it, in the words of its preamble, "as a common standard of achievement for all peoples and all nations."

In the three-judge court decision in *Bauer* v. *Acheson,* 106 F. Supp. 445, *Williams* v. *Fears* was relied upon and the court went on to state:

> "While the Supreme Court was there [in Williams v. Fears] considering freedom to move from state to state within the United States, it is difficult to see where, in principle, freedom to travel outside the United States is any less an attribute of personal liberty. Especially is this true today, when modern transportation has made all the world easily accessible and when the executive and legislative departments of our government have encouraged a welding together of nations and free intercourse of our citizens with those of other friendly countries. Personal liberty to go abroad is particularly important to an individual whose livelihood is dependent upon the right to travel, as is claimed by the plaintiff in this case." (106 F. Supp., at 451).

The right to leave this country is in the same category as the right to "move freely from state to state" which

has been described as "an incident of national citizenship." *Edwards* v. *California*, 314 U.S. 160, 178.

It is in this context that the function of a passport must be considered. Today and in the foreseeable future, its primary use is as a control over exit from the United States and entry into foreign countries. A denial of a passport is a denial of exit and there can be no doubt that the denial of exit is a restriction of liberty in every sense. The distinction between restriction to a jail, to a city, to a state or to a nation is merely one of degree. In *Walker* v. *Chief Quarantine officer*, 69 F. Supp. 980 (D. C. Canal Zone 1943), it was held that a United States citizen was being deprived of his liberty in violation of the Fifth Amendment when he was prevented from leaving the Canal Zone after having complied with all laws and regulations.

The interest here involved is a most fundamental and important one. It goes far beyond the mere convenience of the petitioner. The failure to protect that interest in this case, as the facts demonstrate, can result in the destruction of the passport applicant's livelihood. It is a substantial and basic personal interest which should not be lightly regarded or cavalierly brushed aside. Even more, the denial of that interest can result in serious interference with the advancement of knowledge. This, too, is vividly demonstrated by the facts in this case.

Petitioner is a research physicist. He seeks a passport in order to be able to accept a three-year appointment to engage in cosmic ray research at the Tata Institute in Bombay. Cosmic rays fall upon all parts of the world; their existence has been known for some 50 years and their study has provided us with a great

deal of useful information concerning the nature of the elementary particles which make up the world in which we live. Their study can in no way be regarded as secret. In fact, during World War II this is one of the few fields of physics in which results were regularly published freely in German, American and Russian journals alike. The Tata Institute is the leading research institute in India. Its head, Dr. Hami J. Bhabha, is one of the world's most distinguished theoretical physicists and was president of the International Conference on the Peaceful Uses of Atomic Energy held in Geneva, Switzerland, in August 1955. None of the work carried out at the Institute is classified. As in all scientific research, it is impossible to predict what will be the results of the studies being carried on at the Tata Institute or what the petitioner's participation in those studies might contribute. What is perfectly clear is that if the petitioner is denied a passport, he will have lost all opportunity to contribute anything to those studies, and any advancement of knowledge in this field that might result from his contributions will have been lost.

Thus, the restriction of liberty to travel in this concrete case works its stifling effect upon scientific advance and the growth of knowledge. Restrictions of liberty to travel in general tend to have an adverse impact upon the interchange of ideas in medical, cultural, sociological, and other professional and scholarly fields, as well as upon international understanding. The value to increased international understanding in these critical times which the Secretary of State himself places upon the relaxation of travel restrictions is dramatically underlined by the recently announced agreement between the United States and the Soviet

Union for the reciprocal dropping of travel restrictions and encouragement of wider interchange of tourists, newsmen, and technical and other visitors between our two countries. *Washington Post*, January 28, 1958, p. 1. The effect in a single case is serious enough, but the cumulative effect of these restrictions imposed by the Secretary is even more serious—and, by restricting the advance of knowledge and international understanding, may in the end, we submit, inflict untold harm upon the very interest in whose name they are invoked, our national security. Unless it is clear beyond dispute that such restrictions of personal liberty can only help and not hurt the larger national interest used to justify them, they cannot stand. There is here no such convincing demonstration.

B. The manner in which petitioner was deprived of his right to travel

Respondent deprived petitioner of his liberty by denying him a passport, and the record makes clear that in doing so he relied in part upon information as to which neither substance, sources, nor details were revealed, a procedure contrary to all our traditional notions of a fair hearing. Moreover, it appears that the ultimate source and reliability of some, at least, of the undisclosed information was unknown even to the Secretary himself. (See Petition herein, p. 12, footnote 1).

When respondent Secretary admits that he relied upon undisclosed information in denying petitioner's application for a passport, he is admitting that petitioner was not afforded an opportunity to inspect and refute information which influenced his decision, and he is admitting that petitioner was not informed of the

identity of certain informants, whether they testified under oath, nor whether their testimony was based upon hearsay. He is also admitting that petitioner was denied an opportunity to confront and cross-examine informants whose information was accepted as relevant and material. In making these admissions, respondent in effect concedes that the hearing afforded to petitioner was a sham. "There is no hearing when the party does not know what evidence is offered or considered, and is not given an opportunity to test, explain or refute." *Interstate Commerce Commission* v. *Louisville & Nashville R. Co.*, 227 U.S. 88, 93.

Petitioner has, therefore, been deprived of his "liberty" without a hearing. The fact that the government purports to have determined petitioner's case by means of what it terms a formal "hearing" is not conclusive when it is plain that the basic requirements of due process have not been observed. Moreover, once the Secretary devises an administrative procedure which purports to accord a "hearing", he cannot break the promise implicit in the appearance of fairness by holding a "hearing" that does not accord with fair play. He cannot "shelter himself behind the appearance of legal procedure". Frankfurter, J., dissenting, in *Jay* v. *Boyd*, 351 U.S. 345, 372.

C. Respondent's reasons for depriving petitioner of his right to travel without granting him a hearing

If we look to the Secretary's findings we find two reasons stated for his reliance on confidential information. One is to further national security by avoiding "compromising investigative sources and methods"; the other is to avoid prejudicing "the conduct" or

"the interest of United States foreign relations." *How* the disclosure of all the evidence against petitioner might prejudice our foreign relations is not revealed by the findings—and is impossible for us to conceive. The mere statement of the conclusion should carry no more weight than would the formulae of "interference with the use of the Commerce power" or "compromising the conduct of the Post Office" as a basis for restricting personal liberty on undisclosed evidence. In any event, we submit it requires too much conjecture to to be given conclusive weight against a claim of personal liberty.

We are left, then, with the protection of sources and investigative methods as the sole understandable reason assigned by the Department of State for deciding passport denial hearings on the basis of confidential information not revealed to the citizen.

This was also the reason relied upon by the government in *Parker* v. *Lester*, 227 F. 2d 708 (9th Cir.), and it is our view that the issue of procedural due process presented here is precisely the same as that raised and decided against the government in that case. The present case involves a determination of the procedural rights of a passport applicant who needs a passport to get a job. *Parker* involved the question of the procedural rights of a seaman who needed a specially validated merchant mariner's document to enable him to follow his calling. That the two cases are practically counterparts is demonstrated by the fact that the Passport Regulations of the Secretary of State exempt the travel of any seaman from the requirement of the possession of a passport if he possesses a "specially validated United States merchant mariner's document issued by the United States Coast Guard," 22 C.F.R.

§ 53.3(c). It is that very document of clearance which was at stake in *Parker* (see *Parker* v. *Lester*, 98 F. Supp. 300, 304), and it is in effect a seaman's passport.

The regulations under which seamen were screened provided that no person might be employed on a merchant vessel of the United States unless in possession of a validated document issued by the Commandant of the Coast Guard indicating his "security clearance" following a "security check" which "satisfied [the Commandant] that the applicant's character and habits of life are [not] such as to authorize the belief that the presence of the person aboard vessels of the United States would be inimical to the security of the United States." *Parker* v. *Lester*, 112 F. Supp. 433, 437. As in the case of passports, an initial denial of clearance was made *ex parte*. After such denial, the regulations provided for hearings first before a local appeals board and then before a national appeals board. At an interim stage of the program the local boards were one-man boards; later they were tripartite. The course of the administrative proceedings is well described in the opinion of the District Court:

> "The mechanics of the determination on the basis of which the petitioners' appeals were denied merit some attention. Pursuant to the requirement set forth in the regulations that a person denied clearance must be informed of the 'general basis' for such denial, a form letter was sent to each petitioner advising him that '* * * this finding is based on the belief that you are affiliated with, or sympathetic to an organization, association, group, or combination of persons subversive or disloyal to the Government of the United States'. The procedure during the actual hearing varied from case to case, a pronounced difference being however noticeable between the prac-

tice of the interim and that of the tripartite board. Thus, petitioner Kulper, appearing before a tripartite board, was informed of and questioned at length by the examiners concerning specific instances of alleged misconduct about which the board had information. Kulper managed to persuade the board that he was not a security risk. On the other hand, the procedure before the interm one-man board was epitomized by the case of petitioner Parker. At the outset, Parker was informed that he was believed to be a member of the Communist Party and that the burden was on him to clear himself. He categorically denied such membership and then was conducted by his attorney through an aimless exploration of his background and associations, at the conclusion of which, the examiner, despite counsel's urging, declined to address any questions to petitioner. Parker was not cleared. In no proceeding before an appeals board did witnesses appear against a petitioner, thus depriving him of an opportunity for cross-examination, nor was he ever shown the file containing the information on which the Coast Guard acted. The board members, themselves, had no personal knowledge of the reliability and veracity of the informers and had to rely on the degree of creditability which a governmental investigative agency accorded such sources of information." 112 F. Supp. 433, at 439.

This procedure the District Court found to be unlawful, stating that:

"* * * no reason appears why the Commandant could not apprise petitioners of the basis for his initial determination with such specificity as to afford them reasonable notice and an opportunity to marshal the evidence in their behalves. The same is true of the conduct of the examination by the Board. While it may not be feasible to reveal

> to petitioners the source of the evidence against them, no reason appears in common sense and respondents' argument why petitioners should not be informed of the contents of the testimony. Thus a bill of particulars should be furnished upon demand and petitioners should be given an opportunity to rebut specific allegations of misconduct or other acts and associations which the board considers probative." 112 F. Supp. at 444.

In the actual framing of the decree, the District Court enjoined further administration of the seaman screening program unless a more specific statement of the basis for the initial determination was furnished the seaman "to be worded with such specificity as to afford the seaman reasonable notice of the said basis and an opportunity to marshal evidence in refutation thereof." 227 F. 2d, at 711. The decree also permitted a seaman to demand a bill of particulars from the appeals board but provided "that such bill of particulars need not set forth the source of such data, nor disclose the data with such specificity that the identity of any informers who have supplied such allegations or data will necessarily be disclosed to the said seaman or to other persons." 227 F. 2d, at 711.

This qualification the Court of Appeals for the Ninth Circuit held to be unjustified. It ponted out that as a practical matter it gave "the Coast Guard carte blanche to withhold substantially any information the officials may choose to keep from the seaman". 227 F. 2d, at 722. The Court further held that the regulations denied the plaintiffs due process of law and directed that an injunction restraining their enforcement against the plaintiffs be issued. A decree in absolute terms was issued and upon

further appeal was upheld by the Court of Appeals. 235 F. 2d 787.

From this account it will be seen that in *Parker* v. *Lester* the precise procedural due process point raised here was squarely decided. Moreover, it was decided with the full attention of the Court focused on the role of the "confidential informant". It is difficult indeed to understand the attempt of the respondent in his brief below to distinguish *Parker* "on the ground that the regulations there involved expressly placed an absolute bar on the disclosure of the source of *all* information and the identity of *all* informants—with no qualifications as to their relationship to national security." (Brief of respondent as Appellee below, p. 50). As we have seen, the Court of Appeals for the Ninth Circuit made a careful analysis of the District Court's decree and directed that *all qualifications* on the disclosure of the evidence against the plaintiffs be removed. Had the court wished to sustain a qualification authorizing suppression of information affecting the national security, it may be assumed that it would have done so. But even if the court in *Parker* v. *Lester* had so restricted its holding, it would afford respondent little comfort here because his passport regulations provide for non-disclosure of information even when national security is *not* involved. It is true that § 51.137 of the Passport Regulations provides that a person whose application is tentatively disapproved shall be notified of the reasons "as specifically as in the judgment of the Department of State security considerations permit." But another section (§ 51.163 —which appears in the section on Rules of the Board of Passport Appeals) provides: "The Board shall con-

duct the hearing proceedings in such manner as to protect from disclosure information affecting the national security *or tending to disclose or compromise investigative* sources or methods." (Italics added). § 51.170 provides that in reaching its conclusion "the Board shall consider the entire record including * * * such confidential information as it may have in its possession."

These rules make it obvious that the information which is kept confidential and not disclosed to passport applicants goes beyond that which affects the national security and expressly includes any information "tending to disclose or compromise investigative sources or methods." And in the instant case the Secretary's findings, though artfully worded, are more consistent with the latter reason for withholding the confidential information than with the former. Section VI of the findings states: "To disclose publicly the sources and details of this information would, in my judgment, be detrimental to our national interest *by compromising investigative sources and methods* and seriously interfering with the ability of this Department and the Executive Branch *to obtain reliable information affecting our internal security.*" (Italics added)

It is to be noted that nowhere does the Secretary state that the particular confidential information undisclosed to petitioner in the present case "affects the national security". He says only that disclosure would "compromise investigative sources and methods" and interfere with the Department's ability "to obtain reliable information affecting our internal security". This seems to say only that the alleged compromise of investigative sources and

methods will *in the future* interfere with getting *other* information affecting our internal security. However valid a concern this may be for government investigators or for the Secretary, it is plainly not of the same magnitude of concern as the disclosure of confidential information which *per se* would affect national security. Thus, even if the latter might be sustained against petitioner's claim of an unfair hearing, it does not follow that the former must be.

The language of the passport regulations permitting the Secretary the alternative of withholding information "tending to disclose or compromise investigative sources or methods", which he appears to have adopted in this case, covers the same ground as was covered by the language of the District Court's decree in *Parker* v. *Lester* which the Court of Appeals held should be stricken from the decree as an unjustified qualification. Here the wording is "information * * * tending to disclose * * * investigative sources"; there it was "data * * * disclose[d] * * * with such specificity that the identity of * * * informers who have supplied such allegations or data will necessarily be disclosed." Although some of the words used are different, the plain meaning is the same—and so are the legal consequences. What was a violation of procedural due process in the seamen screening program is equally a violation of procedural due process in the passport denial program. A physicist should not be confined to the country any more than a seaman unless all the evidence against him is revealed.

It is worth noting that the court below made no attempt to distinguish *Parker* v. *Lester;* that troublesome

shade was put to rest by ignoring its existence. Perhaps the court did so in part because it had difficulty following the government's attempts to distinguish *Parker*. In one of its briefs as appellee below, an attempt is made to distinguish cancellation of a seaman's certificate from refusal to issue a passport. (Brief of Appellee below in response to Brief of *Amicus Curiae*, p. 3, footnote 2.) It is argued that denial of a passport to petitioner does not destroy his livelihood as revocation of a seaman's certificate does by excluding the seaman from his chosen field. But petitioner chooses to go to India to pursue work in his field there. To suggest that he must choose a different place to follow his profession would be equivalent to saying that a barred seaman's livelihood is not destroyed because he can choose to get a different type of work.

It was also urged below that the condemnation by the court in Parker of the use of confidential information was of a "limited nature", with a quotation from the opinion referring to the possible sustaining of future regulations "which in some degree qualify the ordinary right of confrontation and cross-examination of informers" (*Id.*, p. 6). The short answer to this possibility of a possibility is that here the right of confrontation is qualified completely out of existence. That the petitioner confronted and cross-examined three witnesses (as the government is so fond of proclaiming) is irrelevant to the fundamental issue here that *other* witnesses on whose information the Secretary in part admittedly based his decision were never identified or confronted, nor even the substance of their information revealed to petitioner.

D. The precedents in this Court do not sustain respondent's action

The attempt of the government here to protect itself against compromise of its investigative sources and methods is not unprecedented or unique, and it must be conceded that the Court has paid some heed to the government's plea that its confidential informants be protected. But it is clear that in no case has this Court ever gone so far as it is now urged to do in sustaining restriction of the liberty of a citizen on information supplied by faceless informers. It is equally clear that some decisions of this Court and of other courts in this area must, in the light of subsequent opinions of this Court, be regarded as no longer controlling, or even persuasive.

In *Bailey* v. *Richardson*, 182 F. 2d 46, (D. C. Cir. 1950), the Court of Appeals for the District of Columbia Circuit, one Judge dissenting, upheld the use of confidential informants in loyalty cases involving government employees. The decision was affirmed here by an equally divided court. To the degree that *Bailey* is not distinguishable (as we think it is because it was considered to involve the right to government employment, not general liberty), it must nevertheless be regarded as having been drained of vitality by subsequent decisions and developments. The *Bailey* case, as this Court said recently of another decision, "is one of those cases that cannot be understood except in its peculiar setting; even then it seems highly unlikely that a similar result would be reached today." *Reid* v. *Covert*, 354 U.S. 1, 10.

That case was decided in 1950, at a time when widespread anxiety and public concern had been inspired by the outbreak of war in Korea, by the disclosure that the Soviet Union had perfected atomic weapons, and by the trial of Alger Hiss. In announcing its decision, the Court of Appeals emphasized that it could not "ignore the world situation" which "presently exist[s]" (182 F. 2d, at 64). At the time of the *Bailey* decision the loyalty program was still in its infancy, and it had not become fully evident that it would be "used to victimize perfectly innocent men". (*Parker* v. *Lester, supra*, 227 F. 2d, at 720). It is now apparent that sufficient experience had not accumulated at the time of the decision to permit adjudication based on full information as to the far-reaching consequences of the ruling.

Since that time, the reasoning of the Court of Appeals in *Bailey* has been rejected by this Court in other cases. The *Bailey* decision cannot be fairly reconciled with *Roviaro* v. *United States*, 353 U.S. 53, which held that it was prejudicial error to withhold the identity of a confidential informant from a defendant charged with a narcotics violation, nor with *Jencks* v. *United States*, 353 U.S. 657, where this Court held that in a criminal prosecution, the government cannot suppress certain types of documents relevant to the prosecution which may tend to exculpate the defendant. And the same Judge who wrote the majority opinion below in the instant case recently wrote for a unanimous court (on this point) in *Communist Party* v. *Subversive Activities Control Board* (U.S. Ct. App., D.C. Cir.), decided January 9, 1958, that "simple justice, the fundamentals of fair play" re-

quire the production of material FBI reports as "one of the fundamentals of fair play required in an administrative proceeding" where the informant's credibility as a witness is attacked. The court there said:

> "The opinion of the Supreme Court in the *Jencks* case, as we read it, is based upon the elementary proposition that the interest of the United States is that justice be done. The same elementary proposition applies here and leads to the same result."[2] (Slip Opinion, pp. 20-1).

In weighing the value of *Bailey* as a precedent, it should be noted that other recent decisions of this Court pronounce a constitutional philosophy adverse to the claim that the alleged exigencies of the "cold war" may be relied upon to justify intrusions upon personal liberty. Among these are *Watkins* v. *U.S.*, 354 U.S. 178, *Sweezy* v. *New Hampshire*, 354 U.S. 234.

---

[2] To the extent that Judge Prettyman may be said to require disclosure of confidential information as essential to the fundamental fair play of *procedural* due process in the quoted case but not in the instant case, we submit that the distinction is untenable. For the opinion below admits that the right to travel is a part of liberty requiring due process protection, that it cannot be arbitrarily denied, that the issuance of a passport is "not the conduct of foreign affairs", and that a "hearing" is required. Yet it upholds the Secretary's determination that "disclosure would adversely affect *our internal security or the conduct of our foreign affairs*" (italics added) as a sufficient basis for denying the disclosure which in the *Communist Party* case was required as one of the "fundamentals of fair play" in a proceeding directly affecting our internal security because of "the elementary proposition that the interest of the United States is that justice be done". It would seem equally elementary and fundamental that the Secretary be required either to disclose his confidential information in a proceeding where he is *not* conducting foreign affairs or to preserve his confidences for the conduct of foreign affairs and not use them to deny petitioner a passport.

and *Schware* v. *Board of Bar Examiners*, 353 U.S. 232. Against this subsequent background of decisions in this Court, *Parker* v. *Lester* now appears all the more valid in its holding that a citizen of the United States may not be deprived of constitutionally protected liberty without an opportunity to understand and meet the charges against him and to face and question those who supply the information relied upon to support the deprivation.

None of the other cases involving personal liberty in which this Court has sanctioned some curtailment of normal hearing benefits has gone as far as respondent urges here. *Shaughnessy* v. *U.S., ex rel. Mezei*, 335 U.S. 206, involved the issue whether the United States could exclude an alien without notice and a hearing, and this Court held, four justices dissenting, that it might. In doing so, however, the majority opinion was careful to point out that the result turned on the fact that a non-resident alien was involved. Even aliens, it was stated, are entitled to due process if they are residents of the United States. That decision is hardly a precedent for restricting the liberty of an American citizen without the fundamentals of fair hearing.

United States ex rel. Knauff v. *Shaughnessy*, 338 U.S. 537, and *Jay* v. *Boyd*, 351 U.S. 345, likewise involved the question of the rights of aliens to hearings, and in the latter case the majority opinion noted that it was not even claimed that a constitutional issue was presented. See 351 U.S. at 357, footnote 21.

Knauff involve an alien excluded from the United States, and the majority stressed "that an alien who

seeks admission to this country may not do so under any claim of right." 338 U.S., at 542. Even there 3 of 7 participating Justices dissented, and Mr. Justice Jackson's warning against the dangers to real security in the use of secret evidence applies forcefully here:

> "Security is like liberty in that many are the crimes committed in its name. The menace to the security of this country, be it great as it may, from * * * [the alien's] admission is as nothing compared to the menace to free institutions inherent in procedures of this pattern. In the name of security the police state justifies its arbitrary oppressions on evidence that is secret, because security might be prejudiced if it were brought to light in hearings. The plea that evidence of guilt must be secret is abhorrent to free men, because it provides a cloak for the malevolent, the misinformed, the meddlesome, and the corrupt to play the role of informer undetected and uncorrected."

In *Jay* v. *Boyd* the alien complaining was found deportable and the question before the court involved the procedure on his application for the completely discretionary relief of suspension of deportation. The majority said that "In view of the gratuitous nature of the relief, the use of confidential information in a suspension proceeding is more clearly within statutory authority than were the regulations involved in the *Knauff* and *Mezei* cases." (p. 359). At the same time it was recognized "that a resident alien in a deportation proceeding has constitutional protections * * * [which] may militate against construing an ambiguous statute as authorizing the use of confidential information in a deportation proceeding." (*Ibid.*) *A fortiori*, a

citizen's larger constitutional protections militate against the use of such information in a proceeding to obtain a basic right which is being denied to him.

The dissenting views in that case, accordingly, appear to us to be entitled to even greater weight on the stronger facts of this case. The Chief Justice referring to undisclosed confidential information, said (p. 362):

> "Such a hearing is not an administrative hearing in the American sense of the term. It is no hearing * * *. To me, this is not due process. If sanction of this use and effect of 'confidential' information is confirmed against this petitioner by a process of judicial reasoning, it may be recognized as a principle of law to be extended against American citizens in a myriad of ways."

The conscientious objector cases are also clearly distinguishable. *United States* v. *Nugent*, 346 U.S. 1, and *Simmons* v. *United States*, 348 U.S. 397, held that under the Selective Service Act, pursuant to which the Department of Justice is required to hold hearings on appeals for draft exemption by alleged conscientious objectors, a registrant was not entitled to examine the FBI report of his background and reputation for sincerity regularly furnished to the Department's hearing officer, but that he was entitled to a resumé of such report. The field of compulsory military service is the only one in which this Court has countenanced the use of resumés in place of confrontation, but even here the Court has been careful to limit its holding by requiring, in a companion case to *Simmons*, that a copy of the recommendation made by

the Department of Justice to the Appeals Board must be made available to the registrant. *Gonzales* v. *United States*, 348 U.S. 407. In any case, the field of selective service under the war power marks the extreme to which this Court has gone in permitting administrative action based upon undisclosed information. It is an extreme which can be justified, and indeed was expressly justified, only as an "exercise of the war power" by means of a statute "calculated to function in times of peril." *United States* v. *Nugent, supra*, at 9. As the opinion of this Court in *Falbo* v. *United States*, 320 U.S. 549, demonstrates, courts will be slow to countenance "litigious interruption of the process of selection [of inductees] which Congress created." (p. 554).

As approached by the Court, the precedents in the conscientious objector cases are hardly persuasive in the field of passport denial. The war power commands the ultimate sacrifice of the individual rights of all to the overwhelming and pressing demand of the nation to preserve itself. No such overwhelming and pressing demand of national self-preservation can be urged by respondent for drafting a few selected individuals to remain in the country without according them the opportunity to persuade him that his informants are wrong, as faceless informers have been known to be, and that in fact the nation's interest and knowledge may even be advanced by their travel. Moreover, the conscientious objector seeks relief from an obligation imposed on all, under claim of a statutory, not a constitutional, right. The passport applicant seeks a constitutional liberty accorded to all but denied to him.

The papers in the present case and the opinion below are searched in vain for a convincing demonstration of any substantial good accomplished by the suppression of evidence here. The real implication of the government's argument is that anonymous informers must be protected at almost any cost. Whatever the sincerity of those who make this plea, on the basis of what is before us we can only conclude that what is sought primarily is not so much protection of the national security itself as of particular investigative measures which have been adopted in its name.

II. THE ADMINISTRATIVE PROCEDURE ACT APPLIES TO PASSPORT PROCEEDINGS

Amici curiae are aware that it may be urged that any argument involving the Administrative Procedure Act is beyond the scope of the questions presented by the petition for *certiorari* granted in the instant case. The petition does, however, squarely raise the question of procedural due process, and it appears to us that a serious question as to the APA flows inevitably from the due process point. For if this Court holds that the Constitution requires that passport applicants be given a due process hearing, the provisions of the APA apply unless one of the exemption provisions makes them inapplicable, under *Wong Yang Sung* v. *McGrath*, 339 U.S. 33. *Amici curiae*, therefore, urge that the following argument be considered under the "plain error" exception in paragraph 1(d)(2) of Rule 40 of this Court.

The court below accepted the proposition that due process of law must be observed in passport denial proceedings, and it seems clear that the "hear-

ing" which respondent purported to give to petitioner was granted under the compulsion of this principle. The court below also expressly rejected any idea that in processing applications for passports, the Secretary of State is fulfilling a foreign affairs function. In *Shachtman* v. *Dulles*, 225 F. 2d 938 (1955), the Court of Appeals for the District of Columbit Circuit had stated:

> "We must not confuse the problem of appellant's application for a passport with the conduct of foreign affairs in the political sense, which is entirely removed from judicial competence. For even though his application might be said to come within the scope of foreign affairs in a broad sense, it is also within the scope of the due process clause, which is concerned with the liberty of the individual free of arbitrary administrative restraint. There must be some reconciliation of these interests where only the right of a particular individual to travel is involved and not a question of foreign affairs on a political level." (p. 944).

These views were reaffirmed in the opinion below, the court adding:

> "The issuance of a passport is not the conduct of foreign affairs. The Secretary does not have unfettered discretion in respect to it—nor does he claim it." (Slip Opinion, pp. 10-1).

Indeed, it would appear that under *United States* v. *Curtiss-Wright Export Corp.*, 299 U.S. 304, if the issuance of passports were considered to be within the area of foreign affairs, the action of the Secretary in denying a passport would be immune from any judicial review whatever.

It follows, therefore, that the exemption provisions in Sections 4 and 5 of the Administrative Procedure Act, excluding from the reach of that statute rule-making and adjudications "to the extent that there is involved any * * * foreign affairs function of the United States" or "the conduct of * * * foreign affairs functions," do not apply to the denial of passports and give respondent no comfort here. There appears to be no middle ground between concluding either that the Secretary of State is not subject to judicial review at all in passport denial proceedings or that his passport procedures are subject to the requirements of the Administrative Procedure Act.

Since no claim is made that any attempt was made to conform to the requirements of that Act, it follows that the Secretary's denial of petitioner's application for a passport was invalid and should be set aside.

CONCLUSION

On the issue of procedural due process the question here is whether a citizen has been given a due process hearing before his admitted basic liberty to travel is restricted, where faceless informers are used to support the restriction. Whatever else a due process hearing may be held to require for this purpose, it is plain that there is no hearing of a dignity to safeguard constitutional liberty where the citizen has no notice of what the confidential information is that is relied upon to deny him his freedom and no opportunity to test the credibility of his accusers or to rebut the evidence which they have presumably presented against him.

It is worth emphasizing that the citizen is not here seeking administrative relief or benefit—he is pursuing an administrative process purporting to accord a hear-

ing, only because his government has restricted his liberty by confining him in the country to the extent that its law requires a passport for him to leave it. But whichever way it is viewed—as the equivalent of a criminal proceeding leading to imprisonment, or as an administrative proceeding leading to a restriction of liberty, the expressed views of this Court impel the conclusion that reports of confidential informants relied upon by the government against the citizen accused must be made available to him, as a matter of fairness, to prepare his defense or reply. No less than this is due process unless we have already yielded our liberty in order to defend it against those whom we would not imitate.

The foregoing argument assumes power in the Secretary to issue or deny passports on an individual basis—which *amici curiae* do not for a moment admit. We are informed that petitioners in the instant case and in the companion cases of *Briehl* and *Kent* v. *Dulles*, No. 481, are urging upon this Court that respondent's passport regulations are invalid because they were not authorized by Congress and because power to issue them could not be delegated by the President since no such power is inherent in his office. We agree with that conclusion. We have not included argument specifically on that point in our brief because we have nothing to add to what will be before the Court on the narrow issue of executive power and statutory construction.

Amici curiae feel, however, that the arguments we have raised above should be taken into account in construing Congressional intent. Construing the pertinent statutes as granting to respondent the power

he claims will require, as we have demonstrated, that grave constitutional questions be faced. Under familiar principles such questions are, whenever possible, avoided by a narrower construction that does not raise constitutional problems. This Court followed that course in a parallel situation in *Peters* v. *Hobby*, 349 U.S. 331. There, in response to the complaint of the petitioner that he was denied any opportunity to confront and cross-examine secret accusers in a government loyalty proceeding, this Court stated that this issue "if reached by the Court, would obviously present serious and far-reaching problems in reconciling fundamental constitutional guarantees with the procedures used to determine the loyalty of government personnel." (p. 338). In his broad dissent in *Briehl* below, Judge Edgerton spelled out fully the reasons which impelled him to such a course there (248 F. 2d 561, 597):

> "The Secretary proposes to continue restricting the personal liberty of a citizen because statements by informants whom the Secretary does not identity have led him to think that if the citizen goes abroad he will do something, the nature of which the Secretary does not suggest, which the Secretary thinks, for reasons known only to him, will be contrary to what, for reasons known only to him, he conceives to be 'the national interest'. If Congress or the President had undertaken to authorize this, serious constitutional questions would arise. May the government deprive a citizen of his constitutional liberty to go abroad (1) without a jury trial, (2) without a definite standard of guilt, (3) without sworn testimony, and (4) without an opportunity to confront his accusers or know their identity? May it deprive him of

this liberty because of the way he has exercised his First Amendment rights of free speech, press, and assembly? Since neither Congress nor the President has undertaken to give the Secretary the authority he claims, we need not consider these constitutional questions."

Moreover, as we have shown, the construction urged by the Secretary of his power to deny passports probably would require that the broad procedural obligations specified in the Administrative Procedure Act be imposed on him. Since the State Department has no quasi-judicial functions except for passport adjudications, it is ill-equipped to meet such obligations—and their imposition as well as grave constitutional questions will be avoided by the narrow construction of the Secretary's power contended for by petitioners and fully set forth in Judge Bazelon's dissent in *Briehl*. (248 F. 2d, at 579).

Whether on statutory construction or constitutional grounds, it is clear that the judgment below should be set aside.

Respectfully submitted,

NATHAN H. DAVID,
Attorney for Federation of American Scientists

SANFORD H. BOLZ,
Attorney for American Jewish Congress
425-13th Street, N. W.
Washington 4, D. C.

February, 1958.